HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 1932 of 2003 (S/S)

Shailendra Singh

Vs.

State of Uttaranchal & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 20.5.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1932 of 2003 (SS)

Shailendra Singh ..... Petitioner

Versus

State of Uttaranchal & others ..... Respondents

Sri M.C. Pant, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: May 20, 2004

Hon'ble Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the issue of a writ in the nature of mandamus directing the respondents to consider the case of the petitioner for regularisation.

Briefly stated the facts giving rise to the present writ petition are that the petitioner was initially appointed on 30.9.1991 by the Children Development Project Officer on daily wages as Junior Clerk and he has joined the services on 1.10.1991. The petitioner has stated that his services were terminated as one Sri Prakash Chandra Bahuguna was appointed by the Commissioner, Garhwal Mandal vide order dated 6.6.1993 on ad hoc basis due to which the services of the petitioner were terminated by order dated 1.11.1993. Against which the petitioner has filed a writ petition No. 44462 of 1993

before the Allahabad High Court and the Court has directed the respondents to treat the petitioner in services on the post of Junior Clerk on daily wages and to pay the salary. The petitioner has stated that on 21.10.1994 an interview of daily wager Junior Clerks was taken but the Children Development Project Officer, Vikas Nagar, Dehradun had no information regarding such interview due to which the petitioner could not attend the interview. However, on 29.10.1994 the Bal Vikas Pariyojana Adhikari wrote a letter to the Director Bal Vikas Sewa Evam Pushtahar requesting to conduct an interview for the petitioner in future. The petitioner has submitted that 19.11.94, 30.11.94 and 25.1.95was fixed for typing test and interview but due to some reasons the interview and typing test could not be held and, therefore, the Bal Vikas Pariyojana Adhikari Vikasnagar wrote a letter to the Director, Bal Vikas Sewa Evam Pushtahar on 8.3.1995 that the service of the petitioner may be regularized.

The petitioner has submitted that he has made several requests to the respondents authorities for regularisation of his services but no order has been passed. Hence the writ petition.

Three Judges of the Apex Court have observed in appeal No. 3634 of 1998(State of U.P. & others vs. Putti Lal) as under:

"In several cases this Court applying the principle of equal pay for equal work has held that a daily wager, if he is discharging the similar duties as those in the regular employment of the government, should at least be entitled to receive the minimum of the pay scale though he might not be entitled to any increment or any other allowance that is permissible to his counter part in the Government

…… …… ……

So far as the State of Uttaranchal is concerned, a scheme for regularisation of daily workers has been produced before us, which prima facie does not appear to be objectionable excepting the provision regarding qualification for

regularisation. Be it sated that the qualification essential for being regularised would be the qualification as was relevant on the date a particular employee was taken in as a daily wager and not the qualification which is being fixed under the scheme. The fact that the employees have been allowed to continue for so many years indicates the existence or the necessity for having such posts. But still it would not be open for the court to indicate as to how many posts would be created for the absorption of these daily wagers workers. Needless to mention that the Appropriate Authority will consider the case of these daily wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is concerned as we have stated in the case of State of Uttar Pradesh, a daily wager in the State of Uttaranchal would be also entitled to the minimum of the pay scale as is available to his counter part in the Government until his services are regularised and he is given regular scale of pay."

The learned counsel for the respondents has referred the Apex Court's judgment in the case State of Haryana and another vs. Tilak Raj and others, 2003 AIR SCW3382, where the Apex Court on the principle of equal pay for equal work has observed that the daily wagers hold no post and they cannot be treated at par with regular employees holding similar post. The Apex Court has observed as under:

"In Harbans Lal's case (Supra) and Vikram Chaudhary's case (supra), it was held that daily rated workmen were entitled to be paid minimum wagers admissible to such workmen as prescribed and not the minimum in the pay scale applicable to similar employees in regular service unless the employer had decided to make such minimum in the pay scale applicable to the daily rated workmen.

…… ……

A scale of pay is attached to a definite post and in case of a daily wager, he holds no posts. The respondent workers cannot be held to hold any posts to claim even any comparison with the regular and permanent staff for any or all purposes including a claim for equal pay and allowances. To claim a relief on the basis of equality, it is for the claimants to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination before becoming eligible to claim rights on a par with other group vis-à-vis an alleged discrimination. No material was placed before the High Court as to the nature of the duties of either categories and it is not possible to hold

that the principle of "equal pay for equal work" is an abstract one.

"Equal pay for equal work" is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.

Judges in the background of aforesaid legal principles, the impugned judgment of the High Court is clearly indefensible and the same is set aside. However, the appellant-State has to ensure that minimum wages are prescribed for such workers and the same is paid to them. The appeal is allowed to the extent indicated above. There will be no order as to costs."

Thus in view of the observation of the Apex Court in Putti Lal's case (Supra), the respondents are directed to consider the representation of the petitioner for his regularisation on the post of Junior Clerk within six weeks after the receipt of certified copy of this order.

The writ petition is disposed of accordingly. No order as to costs.

20.05.2004 **Rajesh Tandon**
Dhyani